# IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL REVISION APPLICATION NO. 46 OF 2006

MR. GOPAL MAPARI, MAPUSA, BARDEZ, GOA. ....Petitioner

Versus

MR. SAVIO D'CUNHA AND ANR., ....Respondents

Ms. H. Fernandes, Advocate for the Applicant/Accused.
Mr. A. Monteiro, Advocate for the Respondent No.1.

Coram:- N. A. BRITTO, J.

Date:- 16th November, 2006

P.C.:-

Heard Ms. H. Fernandes, the learned Counsel on behalf of the applicant/accused and Mr. A. Monteiro, the learned Counsel on behalf of the respondent no.1/complainant.

This revision application is filed for reduction of sentence imposed upon the applicant/accused.

There is no dispute that the respondent no.1/complainant had prosecuted the accused for dishonour of a cheque of a sum of Rs.2000/- and the learned Magistrate vide Order dated 15-2-2006 directed the accused to undergo S.I. for 10 days and to pay a compensation of Rs.2000/- being double the amount of the cheque. The learned Magistrate also directed the accused to undergo S.I. of 15 days, in default of payment of the said compensation.

The accused carried an appeal against the said Order dated 15-2-2006 to the Court of Sessions and the learned Additional Sessions Judge after upholding the conviction reduced the sentence and directed the accused to undergo S.I. only for a period of 5 days. It appears that the complainant also filed another revision for enhancement which came to be dealt by the learned Additional Sessions Judge, Panaji who was pleased to dismiss the same. It would have been appropriate in case the appeal filed

by the accused and the revision filed by the complainant were allotted to and dealt with by the same Judge.

The amount of compensation ordered to be paid by the accused was deposited by the accused when the appeal filed by him was pending and that appears to be the reason why the learned Assistant Sessions Judge considered the 10 days imprisonment to be excessive and reduced the same to 5 days S.I.

Ms. Fernandes, the learned Counsel on behalf of the applicant/accused submits that since the accused deposited the compensation of double of the amount of the cheque when the appeal filed by the accused was pending this could be a fit case not to impose any substantive sentence against the accused. Mr. Monteiro, the learned Counsel on behalf of the complainant, submits that the accused represented to the complainant that he was an Architect, when he was not, and induced the complainant to part Rs.30,000/-, Rs.15,000/- by cheque and Rs.15,000/- by cash in order to get the building plan of the complainant approved. The learned Counsel further submits that the accused gave the subject cheque Rs.2000/- promissing to pay the balance of Rs.28,000/- as the accused could not get the plan approved after one month as promised, nor after the expiry of 3 months, and the very first cheque issued by the accused bounced and that being the case this Court ought not to reduce the period of imprisonment as already reduced by the learned Assistant Sessions Judge. In reply, Ms. Fernandes submits that the complaint certainly was not the remedy to recover the balance which is payable to the complainant.

Factually, what is stated on behalf of the complainant has not been disputed on behalf of the accused. Sentence imposed has already been reduced once. Considering the peculiar facts and circumstances of the case as noted hereinabove this would not be a fit case to reduce the sentence further in revisional jurisdiction.

The revision application is therefore hereby dismissed.

N. A. BRITTO, J.

RD.